

Agreement, as such discretionary public interest determinations are reserved to DHS. However, an alien in removal proceedings who is otherwise ineligible to apply for asylum under the Agreement may apply for asylum if DHS files a written notice in the proceedings before the immigration judge that it has decided in the public interest to allow the alien to pursue claims for asylum or withholding of removal in the United States.

(4) An alien who is found to be ineligible to apply for asylum under section 208(a)(2)(A) of the Act is ineligible to apply for withholding of removal pursuant to section 241(b)(3) of the Act and the Convention against Torture. However, the alien may apply for any other relief from removal for which the alien may be eligible. If an alien who is subject to section 208(a)(2)(A) of the Act is ordered removed, the alien shall be ordered removed to the safe third country in which the alien will be able to pursue his or her claims for asylum or protection against persecution or torture under the laws of that country.

[62 FR 10367, Mar. 6, 1997, as amended at 62 FR 45150, Aug. 26, 1997; 63 FR 27829, May 21, 1998; 64 FR 25766, May 12, 1999; 69 FR 69497, Nov. 29, 2004]

§ 1240.12 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. The decision of the immigration judge shall include a finding as to inadmissibility or deportability. The formal enumeration of findings is not required. The decision shall also contain reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where inadmissibility or deportability is determined on the pleadings pursuant to § 1240.10(b) and the respondent does not make an application under § 1240.11, the alien is statutorily ineligible for relief, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision or, if voluntary departure is

granted, a summary decision with an alternate order of removal.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's removal, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When removal is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's removal shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

§ 1240.13 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 1003.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the Service counsel, if any, at the conclusion of the hearing. A copy of the summary written order shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 1240.12(b), he or she shall serve a copy thereof upon the respondent and the Service counsel at the conclusion of the hearing.

(d) *Decision to remove.* If the immigration judge decides that the respondent is removable and orders the respondent to be removed, the immigration judge shall advise the respondent of such decision, and of the consequences for failure to depart under the order of removal, including civil and criminal penalties described at sections 274D and 243 of the Act. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR-26, Notice of Appeal, and advised of the provisions of § 1240.15.

§ 1240.14 Finality of order.

The order of the immigration judge shall become final in accordance with § 1003.39 of this chapter.